

Message Text

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ACTION NEA-10

INFO OCT-01 ISO-00 AID-05 CIAE-00 EB-08 FRB-03 INR-10
NSAE-00 ICA-11 TRSE-00 XMB-02 OPIC-03 SP-02
LAB-04 SIL-01 OMB-01 OES-09 DODE-00 PM-05 H-01
L-03 NSC-05 PA-01 SS-15 ACDA-12 SES-02 SAA-01
/115 W

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R 100640Z SEP 78
FM AMEMBASSY KUWAIT
TO SECSTATE WASHDC 1774
INFO AMEMBASSY ABU DHABI
AMCONSUL ALEXANDRIA
AMEMBASSY AMMAN
USINT BAGHDAD POUCH
AMEMBASSY CAIRO
AMEMBASSY DAMASCUS
AMCONSUL DHAHRAN
AMEMBASSY JIDDA
AMEMBASSY MANAMA
AMEMBASSY SANA
AMEMBASSY TRIPOLI
AMEMBASSY TEL AVIV
USDOC WASHDC

LIMITED OFFICIAL USE SECTION 1 OF 2 KUWAIT 4919

E.O. 11652: N/A
TAGS: ETRD, KU
SUBJECT: TEXT OF RECOMMENDATIONS APPROVED BY COUNCIL OF
MINISTERS ALTERING BOYCOTT REGULATIONS

REF: KUWAIT 4833

1. BEGIN LIMITED OFFICIAL USE. FOLLOWING IS AN EMBASSY TRAN-
SLATION OF AN INTERNAL GOK MEMO SUBMITTED TO THE COUNCIL OF
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MINISTERS WHICH WAS APPROVED AS REPORTED REFTEL. KUWAIT BOY-
COTT PRACTICE WILL BE ALTERED TO CONFORM WITH THESE
RECOMMENDATIONS, WHICH WERE APPROVED BY THE COUNCIL OF
MINISTERS. WHILE SOME OF THE RECOMMENDATIONS ARE SOMEWHAT
GENERAL, PRACTICAL DETAILS SHOULD BECOME CLEARER IN
COMING WEEKS. SINCE NO OFFICIAL DOCUMENT HAS BEEN ISSUED,
AND POSSIBLY NONE WILL BE PUBLISHED, THE EMBASSY BELIEVES THAT

IT WOULD BE APPROPRIATE TO PUBLICIZE ONLY THE FINAL SECTION OF THE MEMO ENTITLED "RECOMMENDATIONS," WHICH IS, IN FACT, THE OPERATIVE PORTION.

2. BEGIN TEXT: REPORT BY THE COMMITTEE FORMED BY THE COUNCIL OF MINISTERS ORDER OF 21 MAY 1978 TO STUDY THE CONFLICT OF ARAB BOYCOTT PROVISIONS WITH AMERICAN LEGISLATION. ON 2 AUGUST 1978, THE COMMITTEE MET AT THE LEGAL ADVICE AND LEGISLATION DEPARTMENT. THE COMMITTEE COMPRISED COUNSELOR MOHSIN ABDUL HAFEZ FROM THE LEGAL ADVICE AND LEGISLATION DEPARTMENT; DR. TAREQ RAZZOUQI, DIRECTOR OF THE LEGAL DEPARTMENT, MINISTRY OF FOREIGN AFFAIRS; MR. AHMAD HAMIDA, CHIEF OF LEGAL AFFAIRS AT THE MINISTRY OF COMMUNICATIONS; AND MR. MOHAMMAD SUWAIDAN FROM THE BOYCOTT OFFICE IN KUWAIT. THE COMMITTEE DISCUSSED THE MATTER IN THE LIGHT OF THE POLICY PURSUED BY THE OTHER ARAB COUNTRIES AND FOUND OUT THE FOLLOWING:

(1) ON 30 JANUARY 1978, A LAW WAS ISSUED IN THE USA AMENDING THE EXPORT ADMINISTRATION ACT NO. 95-22 OF 22 JUNE 1977. THE AMENDMENT IS AIMED PRIMARILY AT PROHIBITING AMERICAN COMPANIES FROM HAVING A POSITIVE ROLE IN IMPLEMENTING THE BOYCOTT IMPOSED BY SOME FOREIGN COUNTRIES AGAINST A COUNTRY THAT HAS FRIENDLY TIES WITH THE UNITED STATES. TO THAT END, THE LAW PROHIBITS -IN GENERAL- COMPANIES AND PERSONS FROM SIGNING ANY DOCUMENT CONTAINING NEGATIVE TERMS RELATING TO THE BOYCOTT, SUCH AS: "I CERTIFY THAT THE SHIPPED CARGO IS LIMITED OFFICIAL USE

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NOT OF...ORIGIN" BUT PERMITS POSITIVE TERMS SUCH AS: "I CERTIFY THAT THESE GOODS ARE OF U.S. ORIGIN."

(2) AS A RESULT OF THIS AMERICAN ACT, A CONFLICT AROSE BETWEEN IT AND THE TERMS IN SOME DOCUMENTS EMANATING FROM KUWAIT AMONG WHICH ARE LETTERS OF CREDIT, SHIPPING DOCUMENTS, AS WELL AS GOVERNMENT CONTRACTS.

(3) SINCE THE FOREIGN MINISTRY ONLY SUBMITTED TO THE COUNCIL OF MINISTERS THE SUBJECT OF THE LETTERS OF CREDIT AND THE SHIPPING DOCUMENTS ON THIS OCCASION, IT IS REQUIRED THAT THE SUBJECT BE STUDIED IN ITS ENTIRETY SINCE ALL STATE MINISTRIES FACE THE SAME POSITION IN CONNECTION WITH THEIR CONTRACTS WHETHER CONTRACTS OF PUBLIC WORKS, SUPPLIES, CONSULTATIVE SERVICES OR OTHERS...

(4) LETTERS OF CREDIT: LETTERS OF CREDIT ISSUED BY KUWAITI BANKS INCLUDE A PROVISION REQUIRING THAT THE BENEFICIARY PRESENT A CERTIFICATE PROVING THAT THE PRODUCING OR SUPPLY COMPANY IS NOT ON THE PROHIBITED (I.E. BOYCOTT) LIST. THIS PROVISION IS CLEARLY IN CONFLICT WITH THE AMERICAN ACT.

(5) SHIPPING DOCUMENTS: CONTRACTS INCLUDE A PROVISION THAT THE SHIPS ON WHICH GOODS ARE SHIPPED MUST NOT BE ON THE BLACKLIST BY A RESOLUTION FROM THE BOYCOTT OF ISRAEL OFFICE. THIS PROVISION IS ALSO IN CONFLICT WITH THE AMERICAN ACT.

(6) GOVERNMENT CONTRACTS: GOVERNMENT CONTRACTS -\$5#34
5#9 3 *94 2#8:# 53,\$ERS ARE INVITED OR BY APPOINTMENT,
OR CONSULTING CONTRACTS -CONTAIN CONDITIONS THAT REQUIRE THE
FOREIGN CONTRACTOR TO "ADHERE TO ALL PROVISIONS AND RES-
TRICCTIONS RELATING TO BOYCOTT OF ISRAEL." THE TENDERER MUST
ATTACH TO HIS TENDER A CERTIFICATE FROM THE BOYCOTT OF ISRAEL
OFFICE THAT THE TENDER DOES NOT VIOLATE THE PROVISIONS OF THE
CONSOLIDATED LAW OF THE BOYCOTT OF ISRAEL NO. 21 OF 1964
AND THE IMPLEMENTING RESOLUTIONS ISSUED BY THE BOYCOTT OFFICE
AND THAT HE IS NOT BLACKLISTED NOR IS HE WARNED.

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"ANY TENDER NOT ACCOMPANIED BY THIS CERTIFICATE SHALL BE
DISREGARDED." "THE PERSON WHO IS AWARDED THE TENDER SHALL HAVE
TO PRESENT, BEFORE SIGNING THE CONTRACT, ANOTHER CERTIFICATE
FROM THE BOYCOTT OF ISRAEL OFFICE PROVING THAT HE IS NEITHER
BOYCOTTED NOR WARNED. IT IS KNOWN THAT THE CONTRACT WILL

NOT BE SIGNED UNLESS THIS CERTIFICATE IS PRESENTED." THE CONTRACTS ALSO CONTAIN A PROVISION THAT THEY WILL BE CANCELED IN CASE THE OTHER CONTRACTOR VIOLATES THE PROVISIONS OF THE BOYCOTT OF ISRAEL. END LIMITED OFFICIAL LIMITED OFFICIAL USE

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USE.

BEGIN UNCLASSIFIED. RECOMMENDATIONS. THE COMMITTEE IS OF THE OPINION, THAT IF SOLUTION IS SOUGHT, TERMS BE INCORPORATED IN WHICH NEGATIVE EXPRESSIONS ARE NOT USED, AND AT THE SAME TIME, ACHIEVE THE DESIRED PURPOSE TO A GREAT EXTENT. IN CONNECTION WITH LETTERS OF CREDIT: A PROVISION MAY BE INCLUDED REQUIRING THE BENEFICIARY TO CERTIFY THAT THE ORIGIN OF ALL THE GOODS IS USA (OR OTHER COUNTRY) AND THAT THEY ARE THE PRODUCT OF MANUFACTURE OF (A GIVEN COUNTRY. THE BANK WILL VERIFY THAT THAT COMPANY IS NOT BOYCOTTED THROUGH THE RECORDS KEPT BY THE BOYCOTT OFFICE BEFORE PAYING ANY AMOUNT OF THE LETTER OF CREDIT. IN CONNECTION WITH SHIPPING DOCUMENTS: THE MATTER COMES TO A HEAD CONCERNING SHIPPING DOCUMENTS SINCE IN SUCH SALES AS FOB AND CIF DELIVERY IS CONSIDERED MADE AT THE DEPARTURE PORT, I.E. EXPORT PORT. THE SELLER MIGHT LOAD THE GOODS ABOARD A BLACKLISTED SHIP, EITHER INTENTIONALLY OR WITHOUT CERTIFYING WHETHER THE SHIP IS BLACKLISTED OR NOT, THEN HE TAKES THE SHIPPING DOCUMENTS TO THE BANK (BY WHICH HE WILL BE KNOWN FROM THE OPEN LETTER OF CREDIT, AS IS THE USUAL PRACTICE), AND THE KUWAITI BUYER IS CONSIDERED TO HAVE RECEIVED THE GOODS, BUT THE SHIP IS NOT PERMITTED TO ANCHOR IN KUWAITI PORTS. THEREFORE, THE COMMITTEE SEES NO OBJECTIONS TO ACCEPTING THE PROVISION PROPOSED BY THE FOREIGN MINISTRY NOTE WHICH PROVIDES THAT THE SHIP "IS ALLOWED TO ENTER KUWAITI PORTS." WE BELIEVE THAT THIS POSITIVE PROVISION IS NOT IN CONFLICT WITH THE AMERICAN BOYCOTT ACTS- AS WE UNDERSTAND IT- WHICH ONLY PROHIBITS NEGATIVE CLAUSES. HOWEVER, IT APPEARS THAT THIS CLAUSE IS UNACCEPTABLE BY THE AMERICAN AUTHORITIES ON THE BASIS THAT IT FALLS WITHIN LEGAL PROHIBITION AND HENCE THE PRODUCING OR EXPORTING COMPANY IS PROHIBITED TO INCORPORATE IT IN ITS CONTRACTS. HOWEVER, THIS STATEMENT MAY BE TAKEN FROM THE SHIP OWNER OR MASTER WHO LIMITED OFFICIAL USE

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IS CONSIDERED RESPONSIBLE FOR IT. GOVERNMENT CONTRACTS: THE PROVISIONS OF THE PRESENT CONTRACT FORMS MAY BE AMENDED ON THE FOLLOWING BASIS: (A) SEARCH FOR TENDERERS IN THE BOYCOTT OFFICE WILL BE ORGANIZED ADMINISTRATIVELY WITHOUT STIPULATING THAT IN THE

INSTRUCTIONS TO TENDEREERS. (B) THOSE AWARDED THE TENDER WILL PRESENT THE CERTIFICATE REQUIRED BY THE BOYCOTT OFFICE WITHOUT MENTIONING THAT IN THE CONTRACT, OR THE SEARCH TO BE MADE ADMINISTRATIVELY IN THE BOYCOTT OFFICE RECORDS WILL BE SUFFICIENT. (C) THE FOLLOWING PROVISION IN CONTRACTS WILL SUFFICE: "THE CONTRACT IS MADE IN KUWAIT AND IS SUBJECT IN ALL RESPECTS TO KUWAITI LAWS AND REGULATIONS." NATURALLY, LAW NO. 21 OF 1964 IN CONNECTION WITH THE BOYCOTT OF ISRAEL IS A KUWAITI LAW INCLUDED IN THE PROPOSED PROVISION WITH NO NEED TO MENTION IS SPECIFICALLY. END TEXT END UNCLASSIFIED.

3. BEGIN LIMITED OFFICIAL USE. COMMENT: THIS TEXT REFLECTS THE SUCCESS OF THIS EMBASSY'S CONTINUING REPRESENTATIONS AGAINST THOSE GOK PROCEDURES WHICH, IN EFFECT, REQUIRED AMERICAN COMPANIES TO ENFORCE THE ANTI-ISRAEL BOYCOTT ON

BEHALF OF KUWAIT. AS SUGGESTED IN PARA. 1 ABOVE, THE APPLICATION OF THIS NEW POLICY TO THE PROCEDURES WILL HAVE TO BE WORKED OUT IN PRACTICAL TERMS BY THE VARIOUS MINISTRIES. THE EMBASSY WILL CONTINUE TO FOLLOW THIS MATTER WITH THE OBJECTIVE OF ELIMINATING, TO THE FURTHEST EXTENT POSSIBLE, THOSE CONTRACTUAL PROVISIONS WHICH PROMOTED THE BOYCOTT OF ISRAEL. MAESTRONEN

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